

No. 2014-1397

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United States Court of Appeals  
*for the*  
Federal Circuit

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HOSPIRA, INC. and ORION CORPORATION,  
*Plaintiffs-Appellees,*

v.

SANDOZ, INC. and SANDOZ CANADA, INC.,  
*Defendants-Appellees,*

v.

CARACO PHARMACEUTICAL LABORATORIES, LTD.,  
*Appellant,*

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APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE DISTRICT OF  
NEW JERSEY IN CASE NO. 09-CV-4591, JUDGE MARY L. COOPER

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**RESPONSE TO MOTION OF HOSPIRA, INC.  
AND ORION CORPORATION FOR EXTENSION OF  
TIME IN WHICH TO FILE ITS BRIEF ON APPEAL (D.I. 30)  
AND SANDOZ, INC. AND SANDOZ CANADA INC.'S MOTION  
FOR EXTENSION OF TIME TO FILE APPELLEES' BRIEF (D.I. 31)**

Matthew J. Becker  
Jason T. Murata  
AXINN, VELTROP &  
HARKRIDER LLP  
90 State House Square  
Hartford, Connecticut 06103  
(860) 275-8100

*Attorneys for Appellant Caraco  
Pharmaceutical Laboratories, Ltd.*

July 13, 2014

Appellant Caraco Pharmaceutical Laboratories, Ltd. (“Caraco”) submits this memorandum in opposition to Plaintiffs-Appellees Hospira, Inc. and Orion Corp.’s (collectively “Hospira”) Motion for Extension of Time In Which to File Its Brief on Appeal (D.I. 30) and Defendants-Appellees Sandoz, Inc. and Sandoz Canada Inc.’s (collectively “Sandoz”) Motion for Extension of Time to File Appellees’ Brief (D.I. 31).

Good cause does not exist for Hospira’s and Sandoz’s motions to delay filing their briefs. The pending appeal involves two narrow issues: (1) whether the district court abused its discretion in denying Caraco’s motion to intervene; and (2) whether the district court erred in granting vacatur of its decision finding U.S. Patent No. 6,716,867 (“the ‘867 patent”) invalid<sup>1</sup> (“Invalidity Decision”) without hearing from Caraco on the issue. Hospira has already submitted two substantial briefs in this appeal that substantively addressed these issues. (See D.I. 11-1, 20.) Hospira and Sandoz have collectively had almost *three months* since Hospira’s motion to dismiss was filed in which to develop and refine their arguments. That is more than adequate time for Hospira and Sandoz to prepare their responsive briefs on the narrow issues in this appeal.

Hospira’s and Sandoz’ argument that they require an extension of time because of deadlines in other cases and Hospira’s allegation that it needs more time

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<sup>1</sup> Hospira, Inc. v. Sandoz, Inc., No. 09-4591, 2012 WL 1587688 (D.N.J. May 4, 2012).

to consult with counsel are significantly undercut by the fact that they have had months to prepare their briefs and, in fact, Hospira has already submitted two briefs on the issue three months ago. Moreover, their conclusory declarations and briefs fail to address why counsel is unable to comply with this Court's schedule of which counsel have also known for months, and why Caraco should be prejudiced by their inability to comply with the Court's briefing schedule.

Delay in resolving Caraco's ability to intervene in the New Jersey action (and oppose vacatur of the Invalidity Decision) is prejudicial, as it leaves Caraco in the position of having to waste resources in re-litigating the invalidity of the '867 patent in its co-pending litigation with Hospira in the United States District Court for the Eastern District of Michigan (Civ. Action No. 2:10-cv-14514). In fact, Caraco filed a motion for summary judgment in the Michigan action based on collateral estoppel in view of the Invalidity Decision. This motion was denied when the New Jersey district court improperly denied Caraco's motion to intervene and granted vacatur of the Invalidity Decision.

Delay in this case also allows Hospira to forestall generic competition by continuing to assert the '867 patent notwithstanding that it has already been declared invalid. Hospira has sued five other generic manufacturers for infringement of the '867 patent because of their submissions of Abbreviated New Drug Applications on Hospira's Precedex<sup>®</sup> product. And in one of those cases,

Hospira, Inc. v. Intas Corp., Intas has filed a motion for summary judgment based on the Invalidity Decision. (See Hospira, Inc. v. Intas Pharmaceuticals Ltd., No. 14-336, Docket No. 24 (M.D.N.C).) Delay in the resolution of this appeal will undoubtedly impact the collateral estoppel effect of the Invalidity Decision on Hospira, which is the basis for Intas' pending summary judgment motion.

For the foregoing reasons, good cause does not exist for delaying resolution of this appeal. To the contrary, delaying this appeal would prejudice not only Caraco, but also other generic manufacturers that have been sued on the '867 patent. The Court should therefore deny Hospira's and Sandoz's motions to extend the briefing schedule in this appeal.

Respectfully submitted,

Date: July 13, 2014

/s/ Matthew J. Becker

Matthew J. Becker  
Jason T. Murata  
AXINN, VELTROP &  
HARKRIDER LLP  
90 State House Square  
Hartford, CT 06103-3702  
Telephone: (860) 275-8100  
Facsimile: (860) 275-8101  
mbecker@axinn.com  
jmurata@axinn.com

*Attorneys for Appellant Caraco  
Pharmaceutical Laboratories, Ltd*

**CERTIFICATE OF INTEREST**

Pursuant to Federal Circuit Rule 47.4, Counsel for Appellant Caraco Pharmaceutical Laboratories, Ltd. certifies the following:

1. The full name of every party or amicus represented by me is:

Caraco Pharmaceutical Laboratories, Ltd.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Caraco Pharmaceutical Laboratories, Ltd.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

Sun Pharmaceutical Industries Ltd.; Nogad Holdings; Sun Pharma Global, Inc.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Axinn, Veltrop & Harkrider LLP: Matthew J. Becker, Jason T. Murata,  
Matthew S. Murphy, David K. Ludwig

Podvey, Meanor, Catenacci, Hildner, Coccoziello & Chattman, P.C.: Gregory D. Miller

July 13, 2014  
Date

/s/ Matthew J. Becker  
Signature of counsel

Matthew J. Becker  
Printed name of counsel

**CERTIFICATE OF SERVICE**

I hereby certify that on July 13, 2014 I caused true and correct copies of the foregoing Response to Motion of Hospira, Inc. and Orion Corporation for Extension of Time In Which to File Its Brief on Appeal (D.I. 30) and Sandoz, Inc. and Sandoz Canada Inc.'s Motion for Extension of Time to File Appellees' Brief (D.I. 31) to be served via the Court's CM/ECF filing system upon all counsel of record.

Date: July 13, 2014

/s/ Matthew J. Becker

Matthew J. Becker  
AXINN, VELTROP &  
HARKRIDER LLP  
90 State House Square  
Hartford, CT 06103-3702  
Telephone: (860) 275-8100  
Facsimile: (860) 275-8101  
mbecker@axinn.com

*Attorneys for Appellant Caraco  
Pharmaceutical Laboratories, Ltd*